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**Health Resources of Bridgeton, Inc. d/b/a Rainbow Nursing Center and United Food and Commercial Workers Union, Local 56, AFL-CIO. Case 4-CA-25456**

May 8, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on November 18, 1996,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint on December 20, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-18731. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 8, 1997, the General Counsel filed a Motion for Summary Judgment. On April 9, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 30, 1997, the Respondent filed a response.

**Ruling on Motion for Summary Judgment**

In its answer, the Respondent admits its refusal to bargain but contends that the certification was improperly issued because there was another petition pending resolution when the underlying petition was filed, and the Regional Director improperly processed the petition over the Respondent's objections, thus denying it the right to communicate directly with its employees and make changes in employment conditions.<sup>2</sup>

<sup>1</sup> Although the Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to when the charge was filed or served, a copy of the charge and an affidavit of service of the charge are attached to the General Counsel's motion and the Respondent has not challenged the authenticity of those documents.

<sup>2</sup> In addition to denying that the Union's certification was proper, the Respondent also asserts as an affirmative defense that the charges referred to in the complaint are barred by laches. However, the Respondent does not explain how or why that doctrine has any relevance to this proceeding or excuses its admitted refusal to bargain with the Union. In these circumstances, we find that the Respondent's affirmative defenses raise no issues sufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>3</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a New Jersey corporation with a facility in Pittsgrove, New Jersey, has been engaged in the operation of a skilled residential nursing home. During the 12-month period preceding the issuance of the complaint, the Respondent in conducting its business operations described above, received gross revenues in excess of \$100,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held September 20, 1996, the Union was certified on October 1, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time nurses aides and dietary employees employed at the Employer's Pittsgrove, New Jersey, facility, excluding registered nurses, licensed practical nurses, laundry and housekeeping employees, cooks, activity aides, office clerical employees, casual employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

<sup>3</sup> Member Fox did not participate in the underlying representation case. However, she agrees with her colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

### B. *Refusal to Bargain*

Since November 7 and December 5, 1996, the Union has requested the Respondent to bargain and, since December 6, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By refusing on and after December 6, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Health Resources of Bridgeton, Inc. d/b/a Rainbow Nursing Center, Pittsgrove, New Jersey, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 56, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time nurses aides and dietary employees employed at the Employer's Pittsgrove, New Jersey, facility, excluding registered nurses, licensed practical nurses, laundry and housekeeping employees, cooks, activity aides, office clerical employees, casual employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Pittsgrove, New Jersey, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 18, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 8, 1997

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William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union, Local 56, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time nurses aides and dietary employees employed at our Pittsgrove, New Jersey, facility, excluding registered nurses, licensed practical nurses, laundry and house-keeping employees, cooks, activity aides, office clerical employees, casual employees, professional employees, guards and supervisors as defined in the Act.

HEALTH RESOURCES OF BRIDGETON,  
INC. D/B/A RAINBOW NURSING CENTER